

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 11726 of 2004

Between:

Mr. Ghan Shyam S/o. Omprakash,
R/o. 15-7-646/13, 2nd Floor, Begum Bazar, Hyd.

..... PETITIONER

AND

- 1 The Commissioner of Prohibition and Excise, Nampally, Hyderabad.
- 2 The Deputy Commissioner of Prohibition and Excise, Hyderabad Division, Hyderabad.
- 3 The Prohibition and Excise Sub-Inspector, Uppal, Ranga Reddy District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus declaring the action of 1st respondent in rejecting interim custody of petitioner vehicle by order Dt. 17.12.2003 in C.R.No. 21506/2003 CPE/D4 and confiscation order of 2nd respondent dt. 24.11.2003 in C.R.No. C7/4608/2003 is arbitrary, illegal, violation of principles of natural justice and set aside the same and consequently direct the respondents to release petitioner vehicle auto bearing No. A.P.11-V3669 to the petitioner forthwith.

Counsel for the Petitioner: MR.K.VENKATESWARLU

For the Respondents: GP FOR PROHIBITION & EXCISE

The Court at the admission stage made the following:

ORDER:

This writ petition is filed by the petitioner, who is stated to be the financier of the auto bearing No.AP 11 V 3669, which was seized by the Respondent-Department for the alleged involvement in transportation of 1450 sachets of I.D. liquor.

2. It is stated that in the confiscation proceedings, the Deputy Commissioner of Prohibition and Excise passed orders on 24-11-2003 confiscating the vehicle. Against that, it is stated that the present petitioner filed appeal before the first respondent and the same is pending. Pending appeal, the petitioner also made an application seeking interim custody of the vehicle, which was refused by the first respondent by proceedings dated 17-12-2003. Hence, the present writ petition.

3. The Learned Counsel for the petitioner contended that as the original owner of the vehicle defaulted in payment of the loan, which was availed as finance from the petitioner, the vehicle which was hypothecated to the petitioner was proposed to be seized. Before the said vehicle was seized by the financier, it was involved in the alleged act of transportation of I.D.liquor, and was seized by the authorities and ordered for confiscation. The learned counsel also contended that as the petitioner is the really affected party being hypothecatee of the vehicle, he is entitled for the release of vehicle by furnishing necessary security to the satisfaction of Respondent-Department.

4. Heard the learned counsel for the petitioner and the learned

Government Pleader for Prohibition and considered the material on record.

5. In view of the pendency of the appeal filed by the petitioner, the petitioner, who is a financier of the original owner of the vehicle, the second respondent is directed to release the vehicle on furnishing Bank guarantee to the value of the vehicle, which is to be ascertained from the concerned transport authorities. The petitioner is also further directed to file an undertaking before the second respondent that he shall not alienate the vehicle or shall encumber the same pending disposal of the appeal and would also produce the vehicle as and when needed for enquiry.

6. With the above directions, the writ petition is disposed of. No costs.

13-07-2004

Note:

Office to furnish C.C. in two days.

(b/o)

ghn/kvh

To

- 1 The Commissioner of Prohibition and Excise, Nampally, Hyderabad.
- 2 The Deputy Commissioner of Prohibition and Excise, Hyderabad Division, Hyderabad.
- 3 The Prohibition and Excise Sub-Inspector, Uppal, Ranga Reddy District.
4. Two CCs to Government Pleader for Prohibition and Excise, High Court of A.P., Hyderabad. (o.u.t)
5. Two CD copies.